

RULES AND REGULATIONS
RELATED TO THE STATE
DNA DATABASE & DATABANK
(R12-1.5-DNA)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH
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with the provisions of section 42-35-4.1
of the Rhode Island General Laws, as
amended)**

INTRODUCTION

These *Rules and Regulations Related to the State DNA Database and Databank* (R12-1.5-DNA) are promulgated pursuant to the authority conferred under section 12-1.5-3(2) of the Rhode Island General Laws, as amended, and are established for the purpose of adopting minimum standards for the collection, submission, identification, analysis, storage, and disposition of DNA samples and typing results of DNA samples submitted under the requirements of Chapter 12-1.5 of the Rhode Island General Laws, as amended, and for the creation of a DNA database for use in criminal investigations and humanitarian identification purposes.

In accordance with Chapter 12-1.5-1 of the Rhode Island General Laws, as amended, it has been determined by the General Assembly that DNA databanks and DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, and in deterring and detecting recidivism. Many states have enacted laws requiring persons convicted of sexual and violent offenses to provide genetic samples for DNA profiling. Moreover, it is the policy of this state to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations. It is therefore in the best interest of the state to establish a DNA databank and a DNA database containing DNA samples and DNA records of individuals convicted of certain sexual and violent offenses and missing persons.

Pursuant to the requirements of the Act, the Department of Health shall be responsible for the policy management and administration of the state DNA database and state DNA databank and provide for liaison with the FBI and other criminal justice agencies in regard to the state's participation in CODIS or in any DNA database

designated by the Department of Health. The Rhode Island DNA Database will be combined with other state databases by the FBI into their “CODIS” system. This enables various states to share their databases and provides a means to search for criminal suspects regionally and nationally.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, the following were given consideration in arriving at the regulations: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations, by referencing all applicable laws; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the General Laws, as amended, which could result from the regulations. No impact upon small business was identified.

Neither an alternative approach nor any overlap or duplication were identified. The protection of the health, safety and welfare of the public necessitates the adoption of these regulations despite the economic impact which may be incurred as a result.

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PART I *Definitions*

Section 1.0 *Definitions*

Wherever used in these regulations, the following terms shall be construed as follows:

- 1.1 The "**Act**" refers to Chapter 12-1.5 of the General Laws of Rhode Island, as amended, entitled, "An Act Relating to Identification and Apprehension of Criminals."
- 1.2 The term "**CODIS**" is derived from combined DNA index system, the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.
- 1.3 "**Department**" means the Rhode Island Department of Health.
- 1.4 "**Director**" means the Director of the Rhode Island Department of Health.
- 1.5 "**DNA**" means deoxyribonucleic acid, which is located in the cells of the body and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
- 1.6 "**DNA record**" means DNA identification information only, which is stored in the state DNA database or the combined DNA index system for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value only in establishing the identity of individuals. The DNA record, however, does not include the DNA sample, and the DNA record may never include the results of tests of any structural genes. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the **DNA profile** of an individual.
- 1.7 "**DNA sample**" means a blood or tissue sample provided by any person with respect to offenses covered by the Act or submitted to the Department of Health Laboratory pursuant to the Act for DNA analysis or storage, or both.
- 1.8 "**DNA sample collection kit**" means materials designed for the collection, documentation, and security of DNA samples.
- 1.9 "**FBI**" means the Federal Bureau of Investigation.
- 1.10 "**Laboratory**", as used herein, means the Rhode Island Department of Health Laboratory.
- 1.11 "**Secured**" means limited and controlled access only by authorized personnel including use of protection and safety devices to safeguard any and all functions of that equipment or facility.
- 1.12 "**State DNA databank**" means the repository of DNA samples collected under the Act, which is administered by the Department.

- 1.13 ***"State DNA database"*** means the state-level DNA identification record system to support law enforcement which is administered by the Department and which provides DNA records to the FBI for storage and maintenance in CODIS. It is the collective capability to store and maintain DNA records related to forensic casework, the DNA records of those convicted offenders required to provide a DNA sample under state law, and anonymous DNA records used for research, quality control, and other DNA analysis support systems.

PART II *Procedures & Requirements Related to the State DNA Databank and Database*

Section 2.0 *Scope of the Act and Applicable Offenses*

- 2.1 For law enforcement purposes, the Act is applicable to adult persons convicted or sentenced to a period of probation for any of the following offenses: 11-37-2, 11-37-4, 11-37-8, 11-37-8.1, 11-37-8.3, 11-23-1 and 11-23-3. These offenses, as cited in the Chapters of the Rhode Island General Laws, as amended, and listed above, include the following crimes:
- First degree sexual assault;
 - Second degree sexual assault;
 - First degree child molestation sexual assault;
 - Second degree child molestation sexual assault;
 - Murder;
 - Manslaughter.
- 2.2 Except as otherwise provided in section 12-1.5-11 of the Act, DNA samples and DNA records collected under the Act shall be used only for law enforcement identification purposes or to assist in the recovery of identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons; and DNA samples and DNA records collected under the Act shall never be used under the provisions of the Act for the purpose of obtaining information about physical characteristics, traits or predispositions for disease.

Section 3.0 *Procedures for Conduct, Disposition, and Use of DNA Analysis*

- 3.1 All DNA sample typing results, all DNA records and all DNA samples shall be securely stored in the state of Rhode Island DNA database and DNA databank respectively, in the following manner:
- a) All DNA sample typing results and the DNA records shall be stored in a computer database after all personal identifiers have been removed.
 - b) Further, these records shall be accessed only through the use of an encryption code. The encryption code shall be confidential and only those persons authorized by the Department and charged with responsibilities under the Act shall have access to these records and shall be given the encryption code.
 - c) All DNA samples shall be securely locked, with a coded locking system, in a DNA databank at the Department and only the Director and the head of the DNA laboratory shall have access to these DNA samples to carry out the provisions of the Act.

Handling and Security of Samples

- 3.2 DNA records and samples are confidential and shall not be disclosed except as governed by Rhode Island statute. All files, computer, and sample storage systems maintained by the Department pursuant to the Act shall be secured. Access shall be limited to employees of the Department and technical or repair personnel as required to maintain the system as authorized by the Department. All database searches shall be performed via secured communications systems.

Section 4.0 *State DNA Databank*

- 4.1 In accordance with the requirements of the Act, a state DNA databank is established pursuant to these regulations. It shall serve as the repository of DNA samples collected under the Act and shall be administered by the Department.

DNA Sample Required Upon Conviction: Conviction After Effective Date

- 4.2 Every person convicted of an offense as listed in section 12-1.5-7 of the Rhode Island General Laws, as amended, and section 2.1 herein, after the effective date of this section of the Act (June 29, 1998) shall have a DNA sample taken for analysis as follows:
- a) Every person who is sentenced to a term of confinement to prison, for an offense as listed in section 12-1.5-7 of the Rhode Island General Laws, as amended, and section 2.1 herein, shall not be released prior to the expiration of his/her maximum term of confinement unless and until a DNA sample has been taken;
 - b) Every person convicted of an offense or sentenced to probation as listed in section 12-1.5-7 of the Rhode Island General Laws, as amended, and section 2.1 herein, shall have a DNA sample taken for analysis by the Department as a condition for any sentence which disposition will not involve an intake into prison.

Withdrawal, Collection, Transmission and Tracking of DNA Samples

- 4.3 DNA samples collected under the provisions of these rules and regulations shall be processed in accordance with the procedures contained in the Department's current version of the *DNA Analysis Methods Manual*, which is based on the Federal Bureau of Investigation publication, *Quality Assurance Standards for Forensic DNA Testing Laboratories*.
- 4.4 The Department shall be responsible for the collection of DNA samples from covered offenders.
- 4.5 DNA samples shall be obtained using a sample collection kit designed by the Department.
- 4.6 Thumbprint, signature and/or other personal identifiers shall document the identity of the offender.
- 4.7 Only a person authorized by the Department may obtain a sample for DNA analysis.
- 4.8 If the sample is unsuitable for laboratory testing, the Department may authorize collection of a second specimen.
- 4.9 The collection kit shall be sealed and hand-delivered or sent by registered mail to the Laboratory.
- 4.10 Upon submission of the sample collection kit to the Department, designated personnel shall record the date and time of receipt. The kit shall receive a unique identifying number that does not include any personal identification information.
- 4.11 The sample shall be secured in the appropriate storage area until analysis is performed. The Laboratory shall maintain an internal chain of custody to track the sample throughout its storage and analysis.

- 4.12 The genetic markers comprising the DNA profile shall consist of those adopted by the DNA Advisory Board of the Federal Bureau of Investigation.
- 4.13 Persons authorized to withdraw DNA samples under this section shall not be civilly or criminally liable for withdrawing a DNA sample and transmitting test results if they act in good faith and pursuant to the Act.
- 4.14 It shall be a complete defense to a civil or criminal action if the law enforcement and correction officials who physically restrain a person for the taking of a DNA sample, acted in good faith and under the instruction and supervision of medical personnel under the Act to withdraw DNA samples.

Section 5.0 *State DNA Database*

- 5.1 In accordance with the requirements of the Act, a state DNA database is established pursuant to these rules and regulations. It shall be administered by the Department and provide DNA records for the FBI for storage and maintenance by CODIS. The state DNA database shall have the capability provided by computer software and procedures administered by the Department to store and maintain DNA records related to:
 - a) Forensic casework, including the identification of missing persons;
 - b) Convicted offenders required to provide a DNA sample under the Act; and
 - c) Anonymous DNA records used for research on identification technologies or quality control.
- 5.2 Procedures for using the national DNA database shall be in accordance with the U.S. Department of Justice/Federal Bureau of Investigation publication *NDIS Procedures Manual*.

Procedural Compatibility with FBI

- 5.3 The DNA database system as established by the Act shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies and computer software.

DNA Database Exchange

- 5.4 It shall be the duty of the Department to collect DNA samples, to receive, store, and to perform analysis or to contract for DNA typing analysis with a qualified DNA laboratory that meets the regulations herein to classify and to file the DNA record of identification characteristic profiles of DNA samples submitted under the Act and to make such information available as provided in this section.
- 5.5 Access to the DNA databank shall be for identification analysis only and shall be limited upon a showing of need to duly constituted federal, state and local law enforcement agencies and their servicing forensic DNA laboratories and by court order to the defendant or his/her attorney in a criminal case.
- 5.6 The contents of the DNA record of individuals in the state DNA database shall be made available:
 - a) To criminal justice agencies or approved DNA forensic laboratories which serve these agencies; **or**
 - b) Upon written or electronic request and in furtherance of an official investigation by a criminal justice agency or its designated forensic laboratory of a criminal offense or offender or suspected offender;

- c) To prosecuting attorneys who are actively involved in a case in which the DNA record of an individual is relevant; to grand juries and courts when such records are subpoenaed; to defense attorneys when the DNA record is relevant to a pending case.

5.7 The Department may create a separate population database comprised of DNA samples obtained under the Act after all personal identification is removed. The Department may share or disseminate the population database with other criminal justice agencies or forensic DNA laboratories that serve to assist the Department with statistical databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

PART III: *Other Administrative Requirements*

Section 6.0 *Confidentiality of Records*

- 6.1 All DNA profiles and samples submitted to the Department pursuant to the Act shall be treated as confidential and exempt from the provisions of Chapter 38-2 of the Rhode Island General Laws, as amended, except as otherwise provided in the Act.

Section 7.0 *Prohibition and Disclosure*

- 7.1 Any person, who, by virtue of employment or official position, or any person contracting to carry out any functions under the Act, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the state DNA database or in the state DNA databank shall not disclose it in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.
- 7.2 No person shall obtain individually identifiable DNA information from the state DNA database or the state DNA databank without authorization pursuant to the Act to do so.

Section 8.0 *Expungement*

- 8.1 A person whose DNA record or profile has been included in the databank pursuant to the Act may request expungement, on the grounds that the conviction on which authority for including that person's DNA record or profile was based, has been reversed.
- 8.2 The Department shall purge all records and identifiable information in the database pertaining to the person and destroy all samples from the person upon receipt of a written request for expungement pursuant to this section and a certified copy of the final court order reversing the conviction.
- 8.3 The Department shall purge and destroy all records and identifiable information in its database and all DNA samples taken pursuant to the Act from convicted persons upon official proof that the person has been deceased for a period of at least three (3) years. Official proof shall include, but not be limited to, a certified copy of a death certificate.

PART IV: *Penalties and Severability*

Section 9.0 *Violations and Penalties*

- 9.1 Any person who, by virtue of employment or official position, or any person contracting to carry out any functions under the Act, including any officers, employees and agents of such contractor, having possession of or access to individually identifiable DNA information contained in the state DNA database or in the state DNA databank and discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one (1) year or both.
- 9.2 Except as authorized by law, any person, who, for purposes of having DNA analysis performed, obtains or attempts to obtain any DNA sample, or tampers or attempts to tamper with any DNA sample, commits a felony punishable by a fine not more than five thousand dollars (\$5,000) or imprisonment for not more than five (5) years or both.

Civil Remedies

- 9.3 Any person aggrieved by a violation of section 12-1.5-14 of the Rhode Island General Laws, as amended, may, in addition, bring a civil action for damages, injunctive relief, and reasonable attorneys' fees.

Section 10.0 *Interpretation and Severability*

- 10.1 The provisions of the Act shall be liberally construed and shall be held to be in addition to, and not in substitution for or a limitation of, the provisions of any other law. If any provision or part thereof of the Act or application thereof to any person or circumstances is held unconstitutional or otherwise invalid, the remainder of the Act and the application of such provisions to any other persons or circumstances other than those to which it is held invalid shall not be affected thereby.

References

1. *DNA Analysis Methods Manual*, Rhode Island Department of Health, Division of Laboratories, August 1998 (and any subsequent amendments thereto).
2. *Quality Assurance Standards for Forensic DNA Testing Laboratories*, U.S. Department of Justice, Federal Bureau of Investigation, October 1, 1998 (and any subsequent amendments thereto).
3. *NDIS Procedures Manual*, U.S. Department of Justice, Federal Bureau of Investigation, February/March 1998 (and any subsequent amendments thereto).
4. *CODIS State Users' Manual*, U.S. Department of Justice, Federal Bureau of Investigation, September 1996 (and any subsequent amendments thereto).
5. *CODIS Local Users' Manual*, U.S. Department of Justice, Federal Bureau of Investigation, March 1997 (and any subsequent amendments thereto).